UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

DOROTHY RUEL,	)	
	)	
Plaintiff	)	
	)	
v.	)	***Civil No. 92-134 P***
	)	
YORK COUNTY, et al,	)	
	)	
Defendants	)	

MEMORANDUM DECISION ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [1]

In this action the plaintiff is seeking compensatory and punitive damages from York County and one of its deputy sheriffs, Clifford Scott, pursuant to 42 U.S.C. 1983 and state tort law. The plaintiff alleges that by Scott's deliberate use of excessive force, the defendants deprived her of her constitutional rights and caused her to suffer physical and emotional harm. The defendants have moved for summary judgment on the grounds that there is no genuine issue as to any material fact, that the claims are barred by the doctrine of collateral estoppel as a result of her criminal conviction of assault against Scott, that Scott is entitled to immunity under section 1983 and discretionary immunity under the Maine Tort Claims Act, and that the plaintiff's claims against York County depend solely upon the doctrine of *respondeat superior*.

I. SUMMARY JUDGMENT STANDARDS

Fed. R. Civ. P. 56(b) provides that ``[a] party against whom a claim . . . is asserted . . . may,

[1] Pursuant to 28 U.S.C. 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Such motions must be granted if

> the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining if this burden is met, the court must view the record in the light most favorable to the nonmoving party and ``give that party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990) (citation omitted). ``Once the movant has presented probative evidence establishing its entitlement to judgment, the party opposing the motion must set forth specific facts demonstrating that there is a material and genuine issue for trial." *Id.* at 73 (citations omitted); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). A fact is ``material" if it may affect the outcome of the case; a dispute is ``genuine" only if trial is necessary to resolve evidentiary disagreement. *Ortega-Rosario*, 917 F.2d at 73.

II. FACTUAL CONTEXT

It is undisputed that the defendant took the plaintiff into custody on November 15, 1990 at the York County Courthouse. However, the sequence of events attending the incident is heatedly disputed. The defendants' version, offered in Deputy Scott's testimony at the plaintiff's criminal trial, begins with Scott receiving an urgent phone call from Dianne Hill, the Clerk of the Maine Superior Court (York County). Exh. 1 to Statement of Material Fact in Support of Defendants' Motion for Summary Judgment (``Trial Transcript Vol. I") at 77. He asked two deputies who were in the security office at the time to accompany him downstairs. *Id.* Upon entering the clerk's office,

he observed two women shouting at the clerks. *Id.* at 78. The plaintiff had her fist in the air and was shouting obscenities, particularly at Assistant Clerk Jeannine Boucher. *Id.* at 3, 78. The clerks were trying to quiet her down, but with no success. *Id.* at 78. Her demeanor was extremely angry and highly emotional. *Id.* Ms. Hill asked the plaintiff to calm down and then to leave, but she only continued to scream. *Id.* at 79. Scott then asked her several times to calm down and to leave. *Id.* at 81-82. After she refused to leave, Scott told her that if she did not leave voluntarily he would order her out of the office, and that if she failed to comply he would be forced to arrest her. *Id.* at 82. He attempted to escort her from the office but she said, ``I'm not leaving, arrest me," and threw out her hands as if to be handcuffed. *Id.* at 82-83. Scott then said, ``I'm ordering you out of the office or you will be arrested," and grabbed her by the elbow to escort her out, but she pulled away, stating she would not leave and that he should arrest her. *Id.* at 83. He then grabbed her arm and escorted her out off the office, with the plaintiff angrily shouting all the while. *Id.* Scott announced to her that she was under arrest. *Id.* She tried to pull away again and he grabbed her by the arm. *Id.* at 84. She then began to kick and punch him, made threats to kick him in his private parts and struck him under the chin in the neck area. *Id.* at 84-85. To control her, Scott placed the plaintiff in an arm lock, but she continued to punch him with her free hand, kick him, and shout threats and obscenities. *Id.* at 85-86. He then forced her to the floor so that he could put on handcuffs. *Id.* at 88. He held her on the floor, putting his knee in her back, the way he had been taught to handle combative people at the police academy. *Id.* at 89. While she was still struggling and speaking in a loud, angry voice, he pulled her from the floor by the upper arm, whereupon she attempted to kick him in the groin. *Id.* at 90-91. He turned his body to protect himself as a consequence of which she kicked him in the thigh. *Id.* Then with one hand on her arm, he placed the other in her upper chest area and forced her against the wall in a manner to prevent her from getting leverage to kick although she continued to do so. *Id.* at 91-92. He turned her around and, assisted by another deputy, took her to an upstairs holding cell. *Id.* at 92. When he told her that he would have to take

her handbag from her, she became combative again, kicking him with her feet which were not restrained *Id*. at 93-94. He removed the handbag and recuffed her. *Id*. at 94. A few seconds later, two deputies from the jail arrived to take her there for booking. *Id.* At no time did Scott throw her to the floor or hit her head against the floor. *Id.* He was ``a little embarrassed" about the incident because of the differences in their size and weight (he weighs over 200 pounds, while she is a ``small woman" of about 95 pounds) and because, given her ``combative stage," he had to take her into custody. *Id.* at 96.

Although the plaintiff has not furnished the court with her criminal trial testimony, in deposition testimony given in this case she offerred a markedly different description of these events. On November 15, 1990 the plaintiff, accompanied by her mother, went to the Superior Court Clerk's office in the York County Courthouse concerning her mother's legal malpractice claim against an attorney who had represented the mother in a wrongful death case. Ruel Deposition, Exh. to Memorandum of Law in Support of Plaintiff's Objection to Summary Judgment (``Ruel Deposition") at 32. A motion for summary judgment had been heard the day before. *Id.* at 50. The plaintiff believed that Jeannine Boucher, an assistant clerk, had engaged in an improper conversation with opposing counsel in the case concerning impoundment of the file, and wanted to find out why she had discussed the file's impoundment. *Id.* at 53-54. When the plaintiff asked what right Boucher had to discuss the case with the attorney, Boucher denied having done so. *Id*. at 54-55. The plaintiff asked the same question again, receiving the same response. *Id*. at 56. The plaintiff was frustrated but only said she felt sorry for the clerks because they were only ``pawns" and ``were covering up for lawyers." *Id.* at 56-57. When Hill, the head clerk, approached the counter the plaintiff again tried to get an answer but failed. *Id.* at 59. Hill said, ``I'm not going to tolerate you speaking to my people or my girls like this," to which the plaintiff replied, ``What are you going to do, Dianne, have me arrested?" *Id.* Shortly after this exchange, the deputies arrived. The plaintiff may have raised her voice but was not out of control and did not use profanity. *Id.* at

59, 62. The deputies did not speak to her in the clerk's office. *Id.* at 69. Instead, she and her mother were ``herded out" into the hallway where there were other deputies. *Id.* at 69-71. The plaintiff extended her hands and said, in a joking manner, ``Okay, who wants me?" *Id.* at 71. Without warning, Scott twisted her arm upward behind her back. *Id.* at 72-73. She began crying because of the pain and told him he was hurting her, but he responded by pushing her arm up her back a little higher, up to her hair, in the vicinity of her neck. *Id.* at 89. She did not resist him, but called him a bastard. *Id.* at 90. He then grabbed her by the throat in a choking manner and held her with one hand on her throat, the other holding her left arm behind her back, for about 20 seconds. *Id.* at 91-92. She ended up on the floor face down with Scott on top of her. *Id.* at 93-94. When she tried to lift her face off the marble floor, he pushed it back down. *Id.* at 95-96. He kept her on the floor for approximately 15 minutes, with his body on top of hers, holding her in a ``hammerlock" position. *Id.* at 96-97. Eventually, he handcuffed her wrists behind her back. *Id.* at 97. All this time, Scott said nothing to her. *Id.* at 98. She never resisted arrest, punched or kicked him, although in swinging around she may have hit him with her arm or they may have ``bumped bodies." *Id.* at 100. On the way upstairs to the holding cell, Scott held the strap of her pocketbook, which was dangling between her cuffed wrists, like a tether and kept ``pulling on the handcuffs like a pony ride." *Id.* at 103-04. He threw her on the floor of the holding cell, ``laid on [her] again," took one handcuff off to remove the pocketbook and then reattached it. *Id.* at 105-07. As a result of her encounter with Scott, she sustained shoulder, back, cheek, knee, ankle and elbow injuries. *Id.* at 112. She went to the sheriff's office to file a complaint of excessive force but they ``refused to go against one of their own," and later went to the Attorney General's office ``because the sheriff's department would not do anything." *Id.* at 115.

III. LEGAL ANALYSIS

A. COLLATERAL ESTOPPEL

In November 1991, the plaintiff, Dorothy Ruel, was convicted of criminal trespass and assault against Deputy Scott in *State v. Ruel*, York County Superior Court, Docket Nos. CR 91-207 and CR 91-208. Exh. 3 to Memorandum of Law in Support of Plaintiff's Objection to Summary Judgment; Exh. 4 to Statement of Material Fact in Support of Defendants' Motion for Summary Judgment. The jury returned a general verdict of guilty on the assault charge. There were no specific findings of fact.

The case was submitted to the jury with the following instruction on the use of reasonable force:

> A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless he knows that the arrest or detention is illegal.

Exh. 3 to Statement of Material Fact in Support of Defendants' Motion for Summary Judgment (``Trial Transcript Vol. III") at 269.

The jury was further instructed as follows:

> So when a person is placed under arrest they should not use a violent response to what they believe is an illegal arrest. However if in making the arrest the officer uses more force than the law allows him, the victim of that excessive force commits no crime if she defends herself from it.

Id. at 270.

The defendants assert that the key issues in the criminal trial were the lawfulness of Scott's use of force and the plaintiff's own use of force against Scott, and that, because the issues here are identical, the doctrine of collateral estoppel bars the plaintiff's claims in the present action. Memorandum of Law in Support of Defendants' Motion for Summary Judgment (``Defendants' Memorandum") at 8. The plaintiff contends that because her assault conviction was the result of a

general verdict containing no specific findings of fact, it is impossible to know exactly which facts were decided by the jury other than that at some point in her encounter with Scott the plaintiff caused at least one instance of unjustified offensive contact. Memorandum of Law in Support of Plaintiff's Objection to Summary Judgment (``Plaintiff's Memorandum") at 9. Therefore, she argues, she is not collaterally estopped from asserting her claim of excessive force against the defendants.

Collateral estoppel is that aspect of *res judicata* that prevents the reopening in a second action of an issue of fact actually litigated and decided in an earlier one. *See Allen v. McCurry,* 449 U.S. 90, 94 and n. 5 (1980); *Mastracchio v. Ricci,* 498 F.2d 1257, 1259 n.1 (1st Cir. 1974). ``Under collateral estoppel, once a court has decided an issue of fact or law *necessary to its judgment,* that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen*, 449 U.S. at 94 (emphasis added) (citation omitted); *see also State v. Dean,* 589 A.2d 929, 932 (Me. 1991). In order to determine what issues of fact were necessarily involved at the first trial, the reviewing court must ``examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant on, 397 U.S. 436, 444 (1970) (citation and internal quotation marks omitted); *see also Cardillo v. Zyla,* 486 F.2d 473, 475 (1st Cir. 1973). This is particularly so where the antecedent action was a criminal trial because, generally, such trials do not result in anything but the ultimate issue of guilt or innocence. *See Mastracchio,* 498 F.2d at 1261.

The defendants argue that under the instructions given to the jury concerning excessive force, it was required to find that at *no* time during the course of the arrest did Scott employ excessive force. If this were so, the issues as to excessive force in the previous and present actions would be identical.

The court does not have before it the entire record of the criminal proceeding. In the

absence of an opportunity to examine the entire record, including the pleadings and all of the trial testimony, I am unable to exclude the possibility that the jury may have found that at some instant the plaintiff used unjustified force upon Scott, leading to her assault conviction, but without having necessarily determined that at all other times Scott used only reasonably necessary force. Consequently, I conclude that the summary judgment record does not support the defendants' collateral estoppel defense.

B. MUNICIPAL LIABILITY

The plaintiff asserts that York County is liable for civil rights violations under 42 U.S.C. 1983 for failing to provide Deputy Scott with adequate training concerning constitutional limitations on the use of non-deadly force in effecting an arrest.

Local government units are liable under section 1983 for constitutional violations committed pursuant to a government policy or custom. *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658, 690 (1978). Thus, York County, as a local government unit, can be found liable ``only where [it] *itself* causes the constitutional violation at issue. *Respondeat superior* or vicarious liability will not attach under 1983." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989) (emphasis in original). ``This requires that the plaintiff demonstrate both the existence of a policy or custom and a causal link between that policy and the constitutional harm." *Santiago v. Fenton*, 891 F.2d 373, 381 (1st Cir. 1989). The custom or practice must be so well settled and widespread that the county's policy-making officials can be said to have either actual or constructive knowledge of it yet did nothing to end the practice, and it ``must have been the cause of and the moving force behind the deprivation of constitutional rights." *Bordanaro v. McLeod*, 871 F.2d 1151, 1156 (1st Cir. 1989); *see also Maguire v. Municipality of Old Orchard Beach*, 783 F. Supp. 1475, 1488 (D. Me. 1992).

Only where a failure to train amounts to a ``deliberate indifference to the rights of the

persons with whom the police come into contact" will section 1983 provide a basis for liability. *Canton,* 489 U.S. at 388. The failure to train must represent a ``deliberate" or ``conscious" choice by the government unit. *Id.* at 389. In resolving questions of local government liability, ``the focus must be on the adequacy of the training program in relation to the tasks the particular officers must perform." *Id.* at 390; *see also Bordanaro,* 871 F.2d at 1159. Further, the deficiency in the training program must have actually caused the police officer's indifference. *Id.* at 391.

Scott attended the Maine Criminal Justice Academy and received certification in the areas of instruction offered by the basic police school, the correctional school and the court security school. Trial Transcript Vol. I at 74. He also has a master's degree in educational administration and supervision, and is licensed in Maine as a social worker. *Id.* at 75. He has worked as a security officer for the York County Sheriff's Office for more than nine and one-half years. *Id.* The plaintiff argues that the training offered in court security was inadequate because it only involved a two-week course with two or three in-service updates between 1984 and 1990 and an unspecified number of hours (approximately 20) spent watching videotapes covering a variety of subjects in addition to the use of force in making an arrest. *See* Plaintiff's Memorandum at 16-18; Scott Deposition, Exh. to Plaintiff's Memorandum (``Scott Deposition") at 7-9. Because of budgetary limitations, the yearly in-service updates have been irregular. Scott Deposition at 14-15. However, when they are held attendance is mandatory. *Id.* at 21. Attendance at videotape sessions held on noncourt days is mandatory as well. *Id.* at 22-23. The videotapes, as well as court security school, provided training in subduing combative arrestees and handling emotional people. *Id.* at 23-24, 36-39.

Although the training provided by York County may have been constrained by fiscal problems, there has been no failure to train that meets the standard of ``deliberate indifference." When considered relative to the task in question, that is, lawful arrest of a combative or resisting person, the training was adequate to have provided Scott with knowledge as to the use of force and

its constitutional limitations. Further, even if a particular officer such as Scott has been unsatisfactorily trained, this alone is not sufficient to attach liability to the county since ``the officer's shortcomings may have resulted from factors other than a faulty training program." *Bordanaro*, 871 F.2d at 1159.

The plaintiff also contends that a practice of condoning excessive force may be inferred from the event itself because other court personnel did nothing to prevent Scott from using excessive force. A series of interrelated acts of individual police officers, when combined with other, independent evidence of police department policy, may justify such an inference. *Id*. at 1161. However, a ``single incident" of misconduct, without other evidence, cannot provide the basis of local government liability under section 1983. *Id.* n.8. The inaction of the other deputies or court personnel during the incident was not sufficient, therefore, to show a policy of ``deliberate indifference" on the part of the county. Such inaction may just as easily support Scott's argument that his own use of force was judicious and that he had no need for further assistance. Similarly, the plaintiff's statements that the sheriff's department ``would not do anything" and ``refused to go against one of their own," Ruel Deposition at 115, are not sufficient to reflect a county policy.

Thus, I conclude that the plaintiff has failed to provide evidence sufficient to show that there is a genuine issue as to the existence of a York County policy or custom condoning the use of excessive pattern of police behavior.

C. QUALIFIED IMMUNITY

The plaintiff asserts that Deputy Scott deprived her of constitutional rights in violation of section 1983 by using a degree of force in excess of that reasonably necessary under the circumstances (Complaint 4) and claims compensatory and punitive damages under state tort law. The defendants argue that Scott is entitled to qualified immunity under section 1983 and

discretionary immunity under the Maine Tort Claims Act.[2]

The Supreme Court has held that ``government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 812 (1982). This ``objective reasonableness test" is designed to ``avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment." *Id.* In a subsequent case the Supreme Court explained that:

> The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, see *Mitchell* [*v. Forsyth*, 472 U.S. 511] at 535, n.12; but it is to say that in light of pre-existing law the unlawfulness must be apparent.

Anderson v. Creighton, 483 U.S. 635, 640 (1987). Pursuant to *Anderson,* the court must engage in a two-step analysis:

> We first examine the law, to determine whether the right allegedly violated was ``clearly established"; if so, the defendant should reasonably have known of the right. Second, we examine the defendant's conduct, to establish whether objectively it was reasonable for him to believe that his actions did not violate a ``clearly established" right.

Rodriguez v. Comas, 888 F.2d 899, 901 (1st Cir. 1989).

The plaintiff has a clearly established Fourth Amendment right to be free from the use of unreasonable force by law enforcement officials during seizure and arrest. *Graham v. Connor,* 490

[2] Local Rule 19(a) provides that a party filing a motion shall file, with the motion, a memorandum of law including citations and supporting authorities. Because the defendant mentions discretionary immunity under the Maine Tort Claims Act in only a perfunctory manner, with no effort at developed argumentation, I treat this defense as waived for purposes of this motion. *See Collins v. Marina-Martinez,* 894 F.2d 474, 481 n.9 (1st Cir. 1990).

U.S. 386, 395 (1989); *Fernandez v. Leonard,* 784 F.2d 1209, 1217 (1st Cir. 1986); *Vitalone v. Curran,* 665 F. Supp. 964, 974 (D. Me. 1987).[3] Thus, an individual defendant is entitled to summary judgment on the ground of qualified immunity only if in the second step of the analysis he can show that, ``in light of the facts known to the officer[ ] at the time of [his] actions and the clearly established law governing those actions, a `reasonable' [law enforcement official] could have believed the actions lawful." *Vitalone,* 665 F. Supp. at 974.

The Fourth Amendment permits law enforcement officials to use ``some degree of physical coercion or threat thereof to effect" an arrest. *Graham,* 490 U.S. at 396. To determine the reasonableness of the force used during a particular seizure, courts must balance the individual's Fourth Amendment interests against countervailing governmental interests. *Id.* This reasonableness test ``requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* ``The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Id.* at 396-97. Nevertheless, the test is one of objective reasonableness; an officer's underlying intent or motivation is irrelevant. *Id.*

On the summary judgment record before the court, I conclude that there is a genuine issue as to whether the defendant engaged in the use of excessive force against the plaintiff.

CONCLUSION

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[3] The plaintiff does not specify which constitutional rights she believes have been violated. The Supreme Court has stated that ``*all* claims that law enforcement officers have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other `seizure' of a free citizen should be analyzed under the Fourth Amendment and its `reasonableness' standard, rather than under a `substantive due process' approach." *Graham,* 490 U.S. at 395. Consequently, I will treat the plaintiff's claim as raising only a Fourth Amendment claim.

For the foregoing reasons, the defendants' motion for summary judgment is ***GRANTED*** in favor of defendant York County but ***DENIED*** as to defendant Scott.

Dated at Portland, Maine this 8th day of April, 1993.

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David M. Cohen

United States Magistrate Judge